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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)
	)
Policies and Rules Pertaining to	)
Local Exchange Carrier	) RM - ___
"Freezes" on Consumer Choices of	)
Primary Local Exchange or	)
Interexchange Carriers	)

To: The Commission

PETITION FOR RULEMAKING

MCI TELECOMMUNICATIONS CORPORATION

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<u>PETITION FOR RULEMAKING</u>

MCI Telecommunications Corporation (MCI), pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. §1.401, hereby requests that the Commission institute a rulemaking to regulate the solicitation, by any carrier or its agent, of primary interexchange carrier (PIC) "freezes" or other carrier restrictions on the switching of a consumer's primary interexchange (interLATA and intraLATA toll) and local exchange carrier.

A "PIC freeze" is a product or service offered by a local exchange carrier (LEC) to its customers, whereby the LEC promises not to change or modify the customer's service without direct instruction from the customer himself. Although incumbent LECs claim to offer this capability as protection against unauthorized conversion of a customer's service (commonly referred to as "slamming"), the reality is that they have employed PIC freezes as a strategic tool to lock in their own customers and to impede effective competition, particularly in the local and intraLATA toll markets they currently dominate.

Incumbents misuse PIC freezes during the vulnerable transition from monopoly to competition to shield their own customer base from competition and to refuse to implement carrier changes that customers want. A PIC freeze acts as a block to the typical method of executing customer switches of service, which today overwhelmingly occurs as follows: 1) a carrier makes a sale to a customer; 2) the carrier obtains the customer's authorization either verbally or in writing to switch his service; 3) the carrier may verify the sale through third party verification and 4) the carrier acts as the agent of the customer and implements that authorization by sending a carrier-to-carrier electronic feed to the LEC which accomplishes the switch.

The mechanics of enrolling in "PIC freeze" programs vary by LEC, as do the methods customers must use to release those restrictions. Some LECs permit customers to obtain and release a PIC freeze through verbal telephonic authorization. Some require written enrollment and release authorization. Some LECs even require that, to release authorization, the customer use only a specific form obtained from the LEC-- other written forms of customer authorization will be rejected.

Commission action is essential, especially during the critical transition from monopoly to competition in local and intraLATA toll services. Competition can best develop when consumer choice is easily accommodated -- without the interpositioning of processes and procedures that unreasonably frustrate or foreclose this choice. The cumbersome PIC freeze processes implemented by the LECs frustrate consumer choice and the development of competition.

The passage of the Telecommunications Act of 1996 (1996 Act)[1] proposes to change the landscape of the local exchange and interexchange telecommunications markets forever. The 1996 Act is intended to bring the benefits of competition to local markets, and to permit the Bell Operating Companies (BOCs) to provide interexchange service when they satisfy the requirements of Section 271. The potential consequence of this development is that a single carrier will be able to serve consumers for both their local and long distance telecommunications needs. However, for this to happen it is essential that the Commission adopt rules that provide for the "level playing field" so essential to the development of effective competition. This is because one of the markets -- local exchange -- is a monopoly, and would-be competitors will need to access consumers through necessary contacts with the monopoly local exchange carriers.

The potential dangers posed by an incumbent LEC's misuse of its monopoly power in the context of soliciting PIC freezes are graphically demonstrated by the recent practices of Ameritech and Southern New England Telephone Company (SNET). Ameritech has been ordered to implement intraLATA toll dialing parity in Michigan, Illinois, and Wisconsin. SNET, which is competing in the interLATA and intraLATA market, also was required to implement intraLATA toll dialing parity for all of its Connecticut customers. Not coincidentally, when these carriers began to face more effective competition in the markets they dominate, they began aggressively to make it harder for their customers to change carriers for intraLATA and interLATA toll services through the use of "PIC freezes".[2]

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[1] Pub. L. No. 104-104, 110 Stat. 56 (1996).

[2] Data available to MCI indicates that in recent months SNET and Ameritech have relied on PIC freezes and other similar anti-competitive tactics to reject between 10% and 20% of all orders submitted by MCI for a change in carrier. In MCI's case, virtually all of these orders have

The ostensible purpose of PIC freezes is to prevent a customer's long distance carrier from being changed without his consent -- i.e., to prevent the market abuse known as "slamming". Despite the superficial customer-oriented spin from the LECs, it is apparent that the true purpose behind these efforts is to get PIC freeze commitments from customers for all of the customer's telecommunications services before real intraLATA and local competition emerges, so that when competition becomes available, carrier switches will face an additional hurdle. The LECs want to impose additional barriers that will convince many customers that it simply is not worth the effort to switch.

The reality is that incumbent LECs strategically market PIC freezes as a device to shield their own customer base from competition; that incumbent LECs use PIC freezes to refuse to implement carrier changes to which a customer has already provided valid consent; and that customers are often not adequately informed of the significance of a PIC freeze.[3] This strategic use of PIC freezes belies the claim that incumbent LECs are using PIC freezes to protect customers from slamming. In fact, the incumbent LECs are concerned about protecting their own local, intraLATA and interLATA customer base, and their PIC freeze practices are an additional tool used to justify the rejection of tens of thousands of valid orders by their existing

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been verified by independent third party verification. As a result, these are clearly valid sales that have been rejected for no legitimate reason. SNET and Ameritech rejection rates are significantly higher than the rates of other incumbent LECs. It seems quite likely, however, that other incumbent LECs would come to use PIC freezes more aggressively as they are required to implement intraLATA toll dialing parity and to the extent that the BOCs obtain authority to provide in-region interLATA services.

[3] MCI believes that a majority of consumers who have "PIC freezes" on their accounts either do not know these restrictions are in place, or never understood them in the first place.

customers to switch to a more competitive company.[4]

Ameritech, for example, was recently sanctioned by the Michigan Public Service Commission (MPSC) for deceptively promoting PIC freezes to its customers just before the implementation of intraLATA equal access competition.[5] The MPSC determined that Ameritech's campaign deceptively urged its customers to sign up for "PIC Protection" without making clear that the "service" would create obstacles for customers to change not only their interLATA provider but also their intraLATA and local service providers.[6] The MPSC also ruled that the timing of Ameritech's deception impeded the imminent intraLATA presubscription process: "[i]t is anticompetitive because it created new hurdles to the exercise of the customer's decision to change providers just as alternatives were becoming available."[7]

Similarly, SNET has been aggressively promoting PIC freezes -- and only to its own long distance customers -- as a "free service" it calls "Carrier Choice Protection", without accurately explaining to those customers what the "service" entails. In one direct mail solicitation, SNET encouraged its customers to sign up for both "SNET All Distance" service, defined as "local and long distance service within and beyond Connecticut", and "Carrier Choice Protection." The text

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[4] Data available to MCI indicates that in recent months SNET has used PIC freezes to reject approximately 2,000 MCI interLATA orders and 1,000 MCI intraLATA orders each month.

[5] In the Matter of the Complaint of Sprint Communications Company, L.P. against Ameritech Michigan, Case No. U-11038, decided August 1, 1996.

[6] Id. at 5-7.

[7] Id. at 12.

of the solicitation reads in part:[8]

> Did you know that your local and long distance carriers can be changed without your direct request? To protect the SNET long distance service you have, just complete and return this form.
>
> Life holds enough surprises without getting phone bills from companies you've never asked to do business with! With this free service, SNET makes sure you can't be switched unless you know about it and have given your permission first. It's your choice, and you don't want someone else making it for you.
>
> . . . .
>
> * With this signature, I authorize SNET to protect my phone line(s) that use SNET long distance service from being switched without my express written or verbal consent. I understand that this service is free from SNET.

Nowhere does this solicitation contain the essential information that SNET will rely on a customer's authorization to subsequently reject a valid request for a change of carrier, a request conveyed by the customer's express consent, so long as that consent is not conveyed directly to SNET. Thus, a customer who clearly and expressly consents to have his carrier changed, during a telephone conversation with a sales representative, for example, and then consents again through the Commission-approved procedure of independent third party verification, nevertheless will have his order rejected by SNET on the basis of a deceptively acquired PIC freeze. Worse still, a customer could not possibly know at the time he requests a change in carrier that SNET's use of the customer's PIC freeze authorization will prevent his clearly expressed choice of a different carrier from being implemented.

Equally important, the PIC freeze authorization contained in SNET's solicitation, by its

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[8] A similarly worded solicitation formed the basis for an informal complaint filed by MCI against SNET in July, 1996. Letter from Donald J. Elardo, MCI to John Muleta, FCC dated July 23, 1996. The complaint is reflected in File No. 96-09734.

own express language, is only legally effective for customers who have selected SNET as their long distance carrier. In promoting PIC freezes, SNET is clearly motivated by a desire to freeze in place its own long distance customers, and not to protect customers generally against slamming. SNET's targeted advertising campaign works in conjunction with other discriminatory and anti-competitive measures. SNET sales agents, for example, routinely encourage customers
to authorize PIC freezes, but generally only after the customer has selected SNET long-distance as part of their package.

Furthermore, before potential customers select SNET, SNET sales representatives have discriminatory access to information about a customer's PIC freeze, while competing interexchange carriers do not. SNET abuses this monopoly access. Thus, a SNET representative can ensure that a customer consents to an override of his PIC freeze at the same time that he requests to switch from a competing carrier to SNET. A competing carrier, deprived of the same information, does not learn from SNET that a PIC freeze prevents the change until after it has utilized third-party verification and submitted the order to SNET.

Meanwhile, available procedures to remove PIC freezes are cumbersome and ineffective. Once MCI learns of sales that have been rejected because of PIC freezes, it must engage customer service personnel to try to have the freezes removed by calling the new customers and setting up three-way conference calls with SNET representatives. Clearly, if MCI had known that a customer's PIC was frozen during the initial sales call, when SNET sales representatives have this information, MCI could do what SNET presumably does -- conduct a three way conference during the initial telemarketing solicitation when the service was successfully sold.

This discrimination ensures that only an incumbent LEC can wield PIC freezes as a shield against competition, because the incumbent LEC has sole control of the mechanism for creating and removing PIC freezes, as well as sole control of the information as to which customers have PIC freezes.

MCI submits that the PIC freeze practices described above constitute a violation of Section 201(b) of the Communications Act of 1934, as amended, which requires that all carrier practices be "just and reasonable." Incumbent LECs are exploiting their local monopoly power to insulate themselves from interexchange service competition <u>and</u> from potential local competition by impeding the ability of consumers to move easily from their affiliated companies to other carriers. PIC freezing also results in substantial confusion among consumers at a time when significant and complex telecommunications changes are occurring and will continue to occur. Public interest factors require, then, that the Commission take action to eliminate this confusion whenever it arises as a result of carrier undertakings designed to fuel such confusion or which, in fact, result in confusion.

For these reasons, the Commission should adopt a rule that would read essentially as follows:

§64.1200 **Requirements Pertaining To PIC Freezes and Carrier Restrictions**

(a) Carriers are prohibited from engaging in any practices, including soliciting, marketing, or employing PIC freeze or other carrier restrictions, that have the purpose or effect of impeding competition or unreasonably restricting consumer choice.

(b) Any carrier or its agent permitting consumers to affect, via a PIC freeze or other mechanism, the normal procedures for selecting a change in carrier, must:

(1) In no way or manner acquire the PIC freeze through consumer solicitations that are deceptive or misleading;

(2) In no way or manner favor through the solicitations referred to in (b)(1), above, any affiliated carrier;

(3) Furnish upon reasonable request and on a reasonable basis, to any requesting carrier, the name and telephone number of all consumers who have in effect a PIC freeze and /or local, intraLATA or interLATA carrier restrictions on their accounts. If requested, this information must be furnished electronically or through an automated feed and with updates on a daily basis; and

(4) Co-operate with other carriers and affected consumers in any reasonable manner to remove an existing PIC freeze or carrier restriction so that a new carrier can replace a current carrier as promptly as possible. This co-operation must include offering the functionality to conduct a three-way telephone conference between the consumer, the current carrier, and the new carrier; the receipt and efficient processing of written or oral consumer requests to unfreeze the PIC or to remove the carrier restriction; or any other reasonable method designed to implement promptly the consumer's right to choose from among competing carriers. Third party verification of a consumer's request to switch carriers in compliance with Section 64.1100 of the Commission's rules is sufficient to remove a PIC freeze or carrier restriction.

Respectfully submitted,

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